FILED
MAR 7 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1966

No. 1125

ELIAS TSAKONITES,

Petitioner,

—against—

TRANSPACIFIC CARRIERS CORP. and HELLENIC LINES, LTD.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ISAAC SALEM
Attorney for Petitioner
Office & P. O. Address
15 Maiden Lane
New York, N. Y., 10038
BEekman 3-6165

HERBERT LEBOVICI
and
HAROLD D. SAFIR
On Petition

32 CASE PRESS INC., 421 Hudson St., N.Y.—ORegon 5-4540

INDEX

	PAGE
Jurisdiction	1
Questions Presented	2
Statute	3
Statement	3
Connecting Factors Warranting the Application of United States Law	4
The Denial of Jury Trial	5
REASONS AND ARGUMENT FOR GRANTING CERTIORARI:	9
1. The decision below is in conflict with that of the Court of Appeals for the Fourth Circuit in *Southern Cross Steamship Co.* v. *Firipis,* 285 F. 2d 651, in conflict with the decision of this Court in *Lauritzen* v. *Larsen,* 345 U.S. 571, and with the prior decision of the Second Circuit in *Bartholomew* v. *Universe Tankships Inc.,* 263 F. 2d 437	9
2. The within decision determines a matter of substantial importance relating to the application of the Jones Act and General Maritime Law to an area which the Court of Appeals herein stated had not yet been conclusively established and has failed to give proper effect to the applicable decision of this Court in *Lauritzen* v. *Larsen, supra,* and the cases cited herein relative to the obligations of resident aliens and commercial domiciliaries under our law	13

PAGE

3. The decision of the Court of Appeals herein, in failing to hold that the plaintiff had unconstitutionally been deprived of a jury trial with respect to an issue of fact, sanctions a departure by the lower courts from the usual and accepted course of judicial procedure so as to call for the exercise of this Court's power of supervision 17

Index to Appendices

Appendix A—Opinion of the United States Court of Appeals A1

Appendix B—Judgment of the United States Court Appeals A12

Appendix C—Order of the United States Court of Appeals denying reargument and rehearing in banc A13

Appendix D—Opinion and Order of Hon. Irving Ben Cooper, District Judge A14

AUTHORITIES CITED

Cases

Bartholomew v. Universe Tankships, Inc., 263 F. 2d 437 ..... 9, 11, 12, 13, 18

Bascom Launder Corp. et al., v. Telecoin, 204 F. 2d 331 19

Bobolakis v. Compania Panamena Maritima San Gerassimo, S.A., 168 F. Supp. 236 13

Carlisle v. United States, 83 U.S. 147 16

Central Surety and Insurance Corp., v. Murphy, 103 F. 2d 117 18

Connolly v. United States, 149 F. 2d 666 20

PAGE

Dimick v. Schiedt, 293 U.S. 474 20
Dos Hermanos, (The), 15 U.S. 37 16

Eisler v. United States, 170 F. 2d 273 16
Farmers Co-op Oil Co. v. Socony Vacuum Oil Co., 43 F. Supp. 735 19
Fountainbleau Hotel Corp. et ano. v. Crossman, 323 F. 2d 937 18
Francis, (The), Fed. Cas. No. 5034, aff'd 8 Cranch. (12 U.S.) 363 16

Gunning v. Cooley, 281 U.S. 90 18

Hansen Packing Co. v. Swift & Co., 27 F. Supp. 364 .. 19

Indian Chief, (The), 3 C. Rob. 12 16
Ingram v. Associated Pipeline Contractors, Inc., 241 F. Supp. 4 19

Johnson v. Bales, 6 Am. L. J. 68 16

Lake County, etc. v. Massachusetts Bonding & Insurance Co., 75 F. 2d 6 18
Lauritzen v. Larsen, 345 U.S. 571 ... 9, 11, 12, 13, 14, *passim*
Leonhard v. Eley, 151 F. 2d 409 16
Lewis v. Times Publishing Co., 185 F. 2d 457 19

Monteiro v. Sociedad Maritima San Nicolas, S.A., 280 F. 2d 568 17
Moore v. Backus, 78 F. 2d 571 19

Olearchick v. American Steel Foundries, 73 F. Supp. 273 19

Pavlou v. Ocean Traders Marine Corp., 211 F. Supp. 320 ..... 11, 12
Pizzaro, (The), 2 Wheat, (U.S.) 227 16

Schiemann v. Grace Line, Inc., 269 F. 2d 596 18
Southern Cross Steamship Co. v. Firipis, 285 F. 2d 651 ..... 9, 10, 11, 12

PAGE

Tjonaman v. A/S Glittre, 340 F. 2d 290 11
Tsakonitis v. Transpacific Carriers Corp., 368 F. 2d 426 11
United States v. Chin Quong Look, 52 Fed. 203 16
Venice, (The), 69 U.S. 258, 275 16
Venus, (The), 8 Cranch. (12 U.S.) 253 16
Wilson v. Bailey, 257 F. 2d 352 18

Statutes

39 Stat. 733, 46 U.S.C. 814 15
41 Stat. 1007, 46 U.S.C. 688 3
62 Stat. 928, 28 U.S.C. 1254 1

Rules of Civil Procedure:
Rule 38 (a) 17
Rule 39 (a) 2, 17, 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

ELIAS TSAKONITES,

Petitioner,

—against—

TRANSPACIFIC CARRIERS CORP. and HELLENIC LINES, LTD.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, Elias Tsakonites, prays that a Writ of Certiorari be issued to review the decision and judgment of the United States Court of Appeals for the Second Circuit (368 F. 2d 426; opinion annexed as Appendix A and judgment as Appendix B). Same affirmed, by a divided court, a final decree entered in the United States District Court for the Southern District of New York on March 23, 1965 (246 F.S. 634; annexed as Appendix D).

Jurisdiction

The jurisdiction of this Court is invoked pursuant to the provisions of title 28 U.S.C. §1254(1), 62 Stat. 928. The judgment of the Court of Appeals affirming the judgment dismissing the complaint was entered on the 16th day of November, 1966, the appeal having been argued on the 23rd day of March, 1966.

Subsequent to the affirmance by the Court of Appeals a petition for reargument or, alternatively, for rehearing in banc, was filed and both were denied on December 28, 1966, three judges dissenting and voting for a re-hearing in banc (See Appendix C).

Questions Presented

1. Did the lower courts correctly dismiss the complaint of the plaintiff, under the Jones Act and General Maritime Law, where injury to the seaman occurred aboard a foreign flag vessel in territorial waters of the United States, and where stipulated facts showed that the sole shareholder of the Panamanian corporate owner was a Greek corporation whose stock, in turn, was 96% owned by a permanent resident of the United States and that the operations of the ship on which the injury occurred, as well as those of both corporations, were directed and controlled from the United States by such permanent resident?

2. Does the mere failure or refusal of a permanent resident alien shipowner to apply for naturalization entitle him, and the business that he is operating, to immunity from operation of the same United States law with which a competitive citizen shipowner must comply?

3. Was it a violation of petitioner's constitutional right for the District Court to withdraw from the jury the trial of the issue of fact as to whether the American law was applicable to the instant case, absent an express waiver of such right pursuant to Rule 39 of the Federal Rules of Civil Procedure?

Statute

The principal statute involved in this case is the Jones Act (41 Stat. 1007, 46 U.S.C. 688), which is set forth verbatim:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

Statement

This is an action by petitioner, and federal jurisdiction lies, pursuant to the Jones Act and the General Maritime Law of the United States, to recover damages for serious permanent injury sustained on September 26, 1959, while a crewmember (77a ¶ 1).* Petitioner was injured while the vessel was discharging cargo at a dock in Brooklyn, New York (77a ¶ 1).

---

* Reference is to the Appendix certified by the Clerk of the Court of Appeals, unless otherwise stated.

Connecting Factors Warranting the Application of United States Law

The vessel was nominally owned by TRANSPACIFIC CARRIERS CORP., a Panama corporation (77a ¶ 2). The Panama corporation was, in turn, wholly owned by HELLENIC LINES LTD. (77a ¶ 2-5), incorporated in Greece (85a ¶ 34), the issued stock of which was 96½% owned by Pericles G. Callimanopoulos (78a ¶ 7), a lawful permanent resident of the United States who had been residing here since 1945 (78a ¶ 9). The vessel flew the Greek flag (86a ¶ 35).

HELLENIC LINES LTD. maintained its executive office at 39 Broadway (77a ¶ 6) in the City of New York and from there operated "22 or 23 vessels engaged in three liner services", included among which was the SS HELLENIC SPIRIT (81a ¶ 17). The said liner services were respectively engaged in service from the United States to the Mediterranean and return, to the Persian Gulf and return, and to the Red Sea, India and Burma and return (81a ¶ 17).

Not only did Callimanopoulos have absolute control of HELLENIC LINES LTD. and of the HELLENIC SPIRIT by virtue of stock control of HELLENIC LINES LTD., but as "general manager" had sole, absolute power over its affairs (84 ¶ 26, Appendix A). Callimanopoulos directed these companies from his offices at 39 Broadway, where the company had continuously maintained its offices since 1950 (79a ¶ 9). These offices had 63 employees and a monthly payroll of $28,000 (83a ¶ 22). All the agents of the various ports of the said 22 or 23 ships operated from New York reported to these executive offices at 39 Broadway (77a ¶ 6). The bulk of the companies' books and records are maintained

there (81a ¶-17). The substantial bank accounts of HELLENIC LINES are maintained at a Manhattan branch of the First National City Bank of New York and Pericles G. Callimanopoulos (84a ¶ 25), unlike any other employee, was empowered to draw, on his sole signature, the funds of the Company (84a ¶ 28), with a similar power in his wife, Anna Callimanopoulos, although she took no other active role in the business (85a ¶ 29). Extensive lines of credit were established in New York (56a-1-3).

Effectuation of this one man control by Callimanopoulos from New York was had by periodic issuance by the Board of Directors [whose appointment he controlled by virtue of his stock ownership] of Powers of Attorney, giving Callimanopoulos power anywhere, in his own sole discretion, and on his signature alone, to take any action binding the companies (84a ¶29).

The Denial of Jury Trial

This case was reached for trial on February 1, 1965 before Judge Irving Ben Cooper and a jury. Before selection of the jury, Judge Cooper called counsel for both sides into his robing room and there indicated that unless a stipulation of facts satisfactory to him were entered into between counsel, instead of proceeding with the trial, he would return the case to the Trial Part for reassignment to another trial judge, with all the attendant delay in being reached for trial at a later date. What he would do with the stipulation if made was not then disclosed by Judge Cooper, except that he expressly stated he might in any event return the case to the Trial Part.

The stipulation (77a-87a), marked Court's Exhibit 1, (and later as Exhibit 2), was entered into between counsel without agreement as to its meaning or use by the Court. Later that day counsel again appeared before the district judge as directed, who referred for the first time to a division of the case into a "first stage" (6a) and a "second stage", stating:

> "By the 'first stage', I mean the resolution of the issues of fact and law addressed to the challenge whether this Court should apply the Jones Act and the General Maritime Law of the United States to the causes of action asserted here?"

Counsel for the plaintiff immediately indicated that no waiver of a jury trial with respect to the issue was intended, the following transpiring (7a):

> "Mr. Lebovici: The categorical answer is, sir, that there is a lot but there is still more that is subject to subpoena that is not contained in the stipulation.
>
> "The Court: In other words, then, the first stage of the proceeding has not been completed?
>
> "Mr. Lebovici: There is sufficient, sir, however, if your Honor cares to consider this application—without calling that a motion for summary judgment—as to whether or not the plaintiff will make out a prima facie case. There is sufficient so that I am the person who says there is more, and I am willing to risk this issue on argument before your Honor at this time."

Thus, it was clearly the understanding of counsel for the plaintiff that the jury trial of this issue was being preserved and not waived. He expressly stated that the stipulation

did not contain all of the available facts pertinent to the issue of substantial contacts with the United States, that there was "still more subject to subpoena," and that he was willing to argue, as upon a motion for summary judgment, whether plaintiff demonstrated by the stipulated facts that there was sufficient at that point to make out a prima facie case of connecting factors to warrant application of United States law.

These statements of counsel for the plaintiff were but confirmatory of what had already been stated to the Court in the memorandum of law (10a) which had been submitted to the Court prior to our appearance for trial on February 1, 1965, the said memorandum stating, at page 2:

> "The principal problem herein is defendants' claim that the case is not adjudicable pursuant to the Jones Act and the General Maritime Law, that is, the law of the United States. The defendants insist on couching the problem in terms of 'jurisdiction'. As will be noted further on, the problem does not relate to jurisdiction at all, but solely to the problem of the sufficiency of the case presented by the plaintiff; as will be shown, jurisdiction being obviously present, the question that might be claimed to remain, is whether or not the plaintiff's evidence is sufficient to withstand a motion to dismiss the case for failure to make out a *prima facie* case at the termination of the plaintiff's case; a sufficient case appearing the case must be submitted to the jury for determination."

Also, at pages 6 and 7 of the same memorandum, counsel for the plaintiff stated:

> "The important point to be made at this juncture, is that a question of jurisdiction is not present as is

> contended by the defendants' counsel but solely a question arising at the end of the plaintiff's case as to whether or not there is sufficient evidence of contacts that are 'substantial' as requires the Court to deny a motion to dismiss for failure to make out a *prima facie* case. The courts have expressly held that it is not a matter of jurisdiction but rather whether or not a case has been made out. *Lauritzen* v. *Larsen,* 345 U.S. 571, 575; *Romero* v. *International Terminal Operation Co.,* 358 U.S. 354, 359; *Kontos* v. *The Sophie C,* 184 F. Supp. 835, 836-7; aff'd. 288 F. 2d. 437."

Again, that the defendants' attorney understood as well that the plaintiff was so contending, and that plaintiff had not in any respect waived the right to a jury trial, appears from the following statement made by such lawyer in his memorandum (p. 2 thereof) submitted to the Court on February 3, two days *after* (58a) the presentation of the stipulation requested by the trial judge:

> "The plaintiff's attorney has made the claim in the course of pre-trial proceedings *and* made the claim before the Court in the conference held in the Robing Room on February 1, that question of whether the Court has jurisdiction or the plaintiff has cause of action under the Jones Act *is one not for the Court but one for the jury."* (Emphasis ours.)

Indeed, the trial Judge's decision below nowhere touches the point directly, but makes the following oblique statement with respect to the matter (57a):

> "Trial began on February 1, 1965. The parties then agreed in open court to divide the trial into two stages, (1) a determination by the Court whether the Jones Act (46 U.S.C. §688) and the general mari-

time law (hereafter American law) are applicable, and (2) a resolution (if necessary) by the Court and jury of liability and damages.

"Accordingly, the parties stipulated to facts relating to the issue of applicable law. These, *relied upon by the plaintiff to 'make out a prima facie case'* [see Transcript of Trial Proceedings (hereafter Transcript), February 1, 1965, p. 4], or more accurately, to be the basis of the Court's determination whether American law applies, were made part of the record as Court's Exhibit 1." (Emphasis ours.)

This paraphrasing of counsel's statement to mean a possible waiver of a jury trial, was the Court's and not counsel's. Counsel's reference to argument as on a summary judgment and to a *prima facie* case both necessarily reserved the right to trial by a jury and the District Court's opinion, four weeks later, was the first indication to plaintiff that he had allegedly waived this important right. By this time, of course, it was too late for plaintiff to do anything about it in the District Court.

Reasons and Argument for Granting Certiorari

1.

The decision below is in conflict with that of the Court of Appeals for the Fourth Circuit in *Southern Cross Steamship Co.* v. *Firipis*, 285 F. 2d 651, in conflict with the decision of this Court in *Lauritzen* v. *Larsen*, 345 U.S. 571, and with the prior decision of the Second Circuit in *Bartholomew* v. *Universe Tankships Inc.*, 263 F. 2d 437.

In *Southern Cross Steamship Co.* v. *Firipis*, 285 F. 2d 651, wherein the vessel was directed and operated by an agent in New York, wherein only 20% of the stock of the

corporation owning the vessel was held by Americans and wherein the accident occurred in the United States, the Court of Appeals for the Fourth Circuit held that these factors were "substantial" and a sufficient counterweight to the law of the flag. The holding of that case is in no respect reconcilable with that of the instant case wherein not only the vessel in question but some 22 or 23 other vessels were also operated and directed from the United States, wherein the controlling stock of both the owning and operating corporations was 96% owned by a permanent resident of the United States, wherein the accident, as in *Firipis,* occurred in the United States, and wherein the contacts of the transaction with the United States were indisputably "substantial" and distinctly more important, both quantitatively and qualitatively, than they were in *Firipis.*

The very distinction made by the Court of Appeals herein enlarged the conflict between the two Circuits. Without our conceding by one iota that the *S.S. Hellenic Spirit* herein did not fly a "flag of convenience" (we urge the contrary), the Court of Appeals for the Second Circuit found:

> "The Supreme Court has given no indication that the law of the flag (when not a flag of convenience) is still not to be considered of paramount importance."

While the Supreme Court may not have so held, Judge Sobeloff, writing the *Firipis* decision for the Fourth Circuit, expressly stated (285 F. 2d 651, 645, fn. 2):

> "Moreover even in situations where the flag was not shown to be merely one of convenience other considerations have been held to justify the application of the Jones Act to ships of foreign registry."

See also: *Pavlou* v. *Ocean Traders Marine Corp.*, 211 F. Supp. 320, 324-325.

Further making review of the instant decision by the Supreme Court a matter of vital importance is the fact that while several cases have now used the term "flag of convenience" as a basis for arriving at a decision (*Firipis, supra,* at p. 653 of 285 F. 2d; *Tjonaman* v. *A/S Glittre,* 340 F. 2d 290, 291; *Tsakonitis* v. *Transpacific Carriers Corp.,* 368 F. 2d 426, 428, 429), no court has judicially defined this term, leaving an area of enormous uncertainty and dispute.

In this case the Court of Appeals has held this not to be a "flag of convenience" case similar to *Bartholomew* v. *Universe Tankships, Inc.,* 263 F. 2d 437. But no standard is supplied by which such conclusion may validly be reached. Further, those factors which are cited below as the basis for concluding this (at p. 428 of 368 F. 2d) are factors which *Lauritzen* holds insignificant.

On the contrary, moreover, it appears from *Firipis* that on similar facts the Fourth Circuit would have held this to be a flag of convenience case, but that whether it is or not, that American law should be applied.

Further conflict between the two Circuits arises with respect to the meaning to be ascribed to the decision of the Supreme Court in *Lauritzen* v. *Larsen* itself. Thus, the relative weight of the "counterweight" contemplated by *Lauritzen* as sufficient to reject the flag law is differently construed in the two Circuits. In *Firipis,* 285 F. 2d 651, 654, fn. 2, the Court of Appeals stated:

> "The Supreme Court in the Lauritzen case held that the law of the flag was the most important element,

not that it was always the controlling element, and the Court recognized that heavy contervailing considerations might override it."

In the instant case the decision below attributes to *Lauritzen* purported authority for the proposition that the law of the flag, absent a flag of convenience, is of "paramount" importance (p. 429 of 368 F. 2d). By its rejection of the substantial contacts set forth in the stipulation the Second Circuit apparently defines "paramount" as "all-prevailing", since it appears patent that the Fourth Circuit would have held the contacts *sub judice* at least as countervailing as those in *Firipis*.

The currency afforded by *Firipis* to the base of operations was nothing but a re-statement in other language of the factor of "allegiance of the shipowner" mentioned in *Lauritzen*. See also, *Pavlou* v. *Ocean Traders Marine Corp.*, 211 F. Supp. 320, 324-5. By adopting New York as its base of operations respondent in *Firipis* had established its "commercial domicile" there and thus became an allegiant of the United States (see cases cited below at point "2"). In the instant case, the court below refused to consider the commercial domicile of defendants and the allegiance due the United States by the permanent resident, Callimanopoulos.

The decision herein also conflicts with the prior decision of the Court of Appeals for the Second Circuit herein in *Bartholomew* v. *Universe Tankships Inc.*, 263 F. 2d 437. This latter decision is at odds with, as is *Firipis*, the opinion below regarding the relative weight intended to be given in *Lauritzen* to the contending factors of flag and connecting elements. *Bartholomew* interprets *Lauritzen* to

hold that in the presence of "substantial" connecting factors with the United States, the law of the flag is overbalanced. The decision herein, by ascribing "paramount" importance to the law of the flag would make virtually impossible the overbalancing of the law of the flag by appropriate connecting factors. In *Bartholomew,* at p. 440 of 263 F. 2d, the Court of Appeals cited with approval the case of *Bobolakis* v. *Compania Panamena Maritima San Gerassimo, S.A.*, 168 F. Supp. 236, stating that "American ownership alone was deemed sufficient to apply the Jones Act" and to counterweigh the law of the flag. The holding herein, where 96% stock ownership by an American resident, control and operation of the within vessel and some 22 other ships from New York, not to mention numerous other contacts of substance, also can not be reconciled either with the holding of the Second Circuit in *Bartholomew* or its approval of the holding in *Bobolakis.*

2.

The within decision determines a matter of substantial importance relating to the application of the Jones Act and General Maritime Law to an area which the Court of Appeals herein stated had not yet been conclusively established, and has failed to give proper effect to the applicable decision of this Court in *Lauritzen* v. *Larsen, supra,* and the cases cited herein relative to the obligations of resident aliens and commercial domiciliaries under our law.

While the majority below expressly stated that the elements of the case at bar have not been settled by existing decisions, the dissenting opinion unqualifiedly asked for reversal of the District Court.

The majority opinion stated:

> "The present case presents a combination of factors the significance of which is not conclusively established by existing cases." (368 F. 2d 426, 428),

while Judge Waterman's dissent held (p. 430 of 368 F. 2d):

> "So, unless the same obligations that United States law imposes on shipowners who are United States citizens are imposed on resident alien shipowners, a resident alien shipowner like Callimanopoulos will be able to enjoy the considerable benefits of lawful permanent resident alien status in this country without being subject to the duties and obligations exacted of an otherwise similarly situated competitive shipowner who is an American citizen. The statement of this last proposition would seem to be enough to require a reversal instead of an affirmance of the order below."

The many courts that have considered this area have differed with respect to the relative importance intended by *Lauritzen* to be afforded to matters of form, as opposed to matters of substance. There is no dispute that Callimanopoulos, and the two corporations through which this entire fleet was sailed, are located, operated, directed, financed and managed entirely in and from New York; that Callimanopoulos has resided here since 1945 and has been a permanent resident here since 1956 or 1957; that the accident happened here; that the plaintiff received substantial medical treatment here and was denied further treatment here that he needed; that Callimanopoulos owned 96% of the corporate stock, and that this fleet is engaged in the foreign commerce of the United States, from and return

to the United States, within the meaning of 46 U.S.C. 814, 39 Stat. 733, are all matters of substance and weight.

That Callimanopoulos has seen fit to have the two defendants herein incorporated, respectively, in Panama and in Greece, with dummy officers and directors of his own choice and whose tenure is subject to his whim whether they be Greek or otherwise; that Callimanopoulos, a lawful resident of the United States, has by his own choice failed to apply for a certificate of naturalization; that the vessel owned by an American domiciliary flew the Greek flag, and that the plaintiff herein signed a contract of adhesion with respect to his employment, are all purely matters of form.

If genuine and pervasive substance is thus to triumph over mere form, it has become necessary for this, the Supreme Court, to say so. The lower courts are in conflict with respect to the matter. That this Court was concerned with this distinction is clear from its statement in the *Lauritzen* case with respect to "Allegiance of the defendant shipowner" (345 U.S. 565, 587) wherein it stated:

> "But it is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them. But here again the utmost liberality in disregard of formality does not support the application of American law in this case, for it appears beyond doubt that this owner

is a Dane by nationality *and domicile.*'' (Emphasis ours)

Callimanopoulos, as distinguished from J. Lauritzen, a legal resident of the United States is by such token an allegiant thereof (*Leonhard* v. *Eley,* 151 F. 2d 409, 410; *Eisler* v. *United States,* 170 F. 2d 273, 279; *The Pizzaro,* 2 Wheat (U.S.) 227, 245; *The Venus,* 8 Cranch. (12 U.S.) 253, 283; *Johnson* v. *Bales,* 6 Am. L. J. 68, 85; *Carlisle* v. *United States,* 83 U.S. 147; *The Venice,* 69 U.S. 258, 275; *The Dos Hermanos,* 15 U.S. 37, 46; *The Francis,* Fed. Cas. No. 5034 p. 674, aff'd 8 Cranch. (12 U.S.) 363; *The Indian Chief,* 3 C. Rob. 12, 18).

In holding as it did that an American shipowner would not be permitted by resort to formal artifice or nominal registration to escape the operation of United States law affected with the public interest, this Court clearly indicated that it would not permit form to subvert substance. The two corporate defendants herein both operating from and directly controlled from the United States are also commercial domiciliaries thereof, and thus are likewise allegiants of the United States (*The Indian Chief, supra; The Francis, supra; United States* v. *Chin Quong Look,* 52 Fed. 203).

It is difficult to believe that the Jones Act, the result of an ''Act to promote the welfare of American Seamen'' and an ''Act to provide for the promotion and maintenance of the American merchant marine'' (*Lauritzen,* 345 U.S. 571, 579, 580) could be so discriminately construed against the American seaman and against the American shipowner who must compete with the resident alien shipowner

'across the street'' in the identical business. Especially is this applicable if it be recalled this legislation was enacted to " . . . 'equalize the cost of operation' of American and foreign flag vessels and thereby discourage American shipowners from placing their vessels under foreign flags.'' *Monteiro* v. *Sociedad Maritima San Nicolas, S.A.*, 280 F. 2d 568, 573.

It is respectfully submitted that the confused area delineated requires and is entitled to clarification.

3.

The decision of the Court of Appeals herein, in failing to hold that the plaintiff had unconstitutionally been deprived of a jury trial with respect to an issue of fact, sanctions a departure by the lower courts from the usual and accepted course of judicial procedure so as to call for the exercise of this Court's power of supervision.

Rules 38 (a) and 39 (a) of the Federal Rules of Civil Procedure respectively provide:

38 (a) ''Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

39 (a) ''By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. *The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury* or (2) the court upon motion or

> of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States." (Italics ours.)

As appears from *Bartholomew, supra,* at p. 441, and again at p. 443, of 263 F. 2d, whether or not the connecting factors involved are sufficient to warrant the application of United States law is itself a quesion of fact. Cf. *Lauritzen* at p. 582 of 345 U.S. Furthermore, a plaintiff is entitled in a jury action in the Federal Court to have any question of fact determined by the jury and not solely by the trial judge. Nor did the courts below deny that this is a question of fact for the jury, holding, however, that there was a purported waiver thereof.

That the facts considered below were in the main stipulated by the respective parties did not warrant the trial judge in withholding the ultimate issue of fact from the jury and in deciding it himself, since fair-minded men (for instance, the dissenting judge in the Court of Appeals) could reasonably and honestly have drawn from these same facts a conclusion that the connecting factors contained in the stipulation were indeed sufficient to warrant the application of United States law. *Fountainbleau Hotel Corp. et ano.* v. *Crossman,* 323 F. 2d 937, 943; *Gunning* v. *Cooley,* 281 U.S. 90; *Central Surety and Insurance Corp.* v. *Murphy,* 103 F. 2d 117, 119; *Lake County etc.* v. *Massachusetts Bonding & Insurance Co.,* 75 F. 2d 6, 8; *Schieman* v. *Grace Line, Inc.,* 269 F. 2d 596; *Wilson* v. *Bailey,* 257 F. 2d 352, 353.

Nor is it true that if the ultimate fact to be determined would result in deciding what body of law should be applicable, same makes the matter one for the Court, as dis-

tinguished from the jury. Thus, whether or not an employee is a seaman and the case either a Jones Act or a compensation case (*Ingram* v. *Associated Pipeline Contractors, Inc.*, 241 F. Supp. 4); or, whether or not employees are "engaged in commerce" or in "the production of goods for commerce" to warrant application of the Fair Labor Standards Act (*Lewis* v. *Times Publishing Co.*, 185 F. 2d 457; *Olearchick* v. *American Steel Foundries*, 73 S. Supp. 273); or, whether or not there has been an "overt act" under the Sherman Act so as to make that law applicable (*Bascom Launder Corp. et al.* v. *Telecoin*, 204 F. 2d 331, 335; *Moore* v. *Backus*, 78 F. 2d 571, cert. den'd 296 U.S. 640; *Hansen Packing Co.* v. *Swift & Co.*, 27 F. Supp. 364; *Farmers Co-Op Oil Co.* v. *Socony Vacuum Co.*, 43 F. Supp. 735), are all questions of fact for determination by a jury. The examples can be multiplied manifold.

Clearly herein, where counsel for both sides, stated in writing to the trial judge that each understood that petitioner's counsel was insisting that whether or not the connecting factors were sufficient to warrant the application of the Jones Act was a question of fact for the jury, petitioner's counsel had not joined in any stipulation as required by Rule 39 (a) for the waiver of a jury trial. Only by inaccurately paraphrasing the exact statement of counsel that he was agreeing to no more than the determination of whether or not the plaintiff made out a *prima facie* case in such respect, did the district court find the "oral stipulation made in open court and entered in the record, [to be] consent to trial by the court sitting without a jury," as required by Rule 39 (a). But, clearly, counsel neither had made nor intended such agreement.

Neither the stipulation of facts nor the oral stipulation of petitioner's counsel with respect to the submission to Judge Cooper provided for the express waiver required by the Rule. There cannot be such a waiver of the jury trial without an understanding that it is being waived. *Connolly* v. *United States,* 149 F. 2d 666, 669.

The matter is one of Constitutional right. *Dimick* v. *Schiedt,* 293 U.S. 474, 486.

It is respectfully submitted that the decisions below should in any event be reversed and the matter returned to the District Court for the determination of the issue by the jury.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may issue directed to the United States Court of Appeals for the Second Circuit commanding that Court to certify and to send to this Court a full and complete transcript of the record of all proceedings of said Court in the above entitled cause, to the end that said cause may be reviewed and determined by this Court as provided by law.

And your petitioner will ever pray.

ELIAS TSAKONITES

By ISAAC SALEM
Attorney for Petitioner

HERBERT LEBOVICI
and
HAROLD D. SAFIR
On Petition

Verification

STATE OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK } ss.:
COUNTY OF NEW YORK

ISAAC SALEM, being duly sworn, deposes and says:

That he is one of the attorneys for the Petitioner, Elias Tsakonites, that he has read the said Petition subscribed by him and that the facts therein stated are true to the best of his knowledge, information and belief.

/s/ ISAAC SALEM
Isaac Salem

Sworn to before me this
7th day of March, 1967

MILTON C. WINKLER
Notary Public, State of New York
No. 31-9704765
Qualified in New York County
Commission Expires March 30, 1968

APPENDIX A

Opinion of United States Court of Appeals

[SAME CAPTION]

Before:

LUMBARD, *Chief Judge*,
WATERMAN and MOORE, *Circuit Judges*.

Appeal by a Greek seaman injured on board a Greek vessel in the United States from a dismissal of his claim under the Jones Act, 46 U. S. C. §688, by the United States District Court for the Southern District of New York, Irving Ben Cooper, *Judge*.

Affirmed.

HERBERT LEBOVICI, New York, N. Y. (Harold D. Safir, Lebovici and Safir, New York, N. Y., on the brief), *for plaintiff-appellant*.

EDWIN K. REID, New York, N. Y. (George D. Byrnes, Zock, Petrie, Sheneman & Reid, New York, N. Y., on the brief), *for defendants-appellees*.

JAMES M. ESTABROOK, DAVID P. H. WATSON, HAIGHT, GARDNER, POOR & HAVENS, New York, N. Y., *for Kingdom of Greece, the Union of Greek Shipowners and the Chamber of Shipping of Greece, as amici curiae*.

MOORE, *Circuit Judge:*

Plaintiff, a Greek seaman, brought suit in the Southern District of New York, relying entirely upon the Jones Act and the general maritime law of the United States. The District Court dismissed the case on the merits on the grounds that plaintiff had failed to establish the applicability of American law. From this judgment plaintiff appeals.

The sole question presented on this appeal is whether the Jones Act, 46 U. S. C. §688, and the general maritime law of the United States apply to an accident in an American port to a foreign seaman on a ship owned by a foreign corporation and flying a foreign flag, where the principal shareholder of the foreign corporation, though a foreign citizen, resides in America, and where the operations of the ship on which the injury occurred were controlled from this country.

Elias Tsakonites, a Greek citizen and domiciliary, the plaintiff-appellant, signed on as a member of the crew of the *SS Hellenic Spirit* under an agreement dated Piraeus, Greece, June 4, 1959, which provided that any claim arising from his employment was to be tried exclusively by the Greek law courts. Plaintiff boarded the *Hellenic Spirit* on June 5, 1959, at Herakleion, Crete. The ship was then on the outward leg of a voyage from Houston, Texas, to Rangoon, Burma, with numerous stops in between. After reaching Burma, the ship sailed back through the Red Sea and the Mediterranean, stopping at New York and Philadelphia before finishing its inward voyage in Cuba. The accident which gave rise to the present suit occurred while the *Hellenic Spirit* was berthed at a pier in Brooklyn. On September 26, 1959, while descending a ladder from the

main deck to the interior of a hold, plaintiff fell to the deck below. He was taken to the Lutheran Medical Center in Brooklyn, where he remained until January 20, 1960.

The *Hellenic Spirit* at all times relevant to this suit sailed under the Greek flag and was registered under the laws of Greece. Her crew and officers were almost entirely Greek. She was owned by the defendant Transpacific Carriers Corp., a Panamanian corporation wholly owned by the defendant Hellenic Lines, Ltd., a Greek corporation, over 96% of the shares of which were owned by Pericles G. Callimanopoulos, a Greek citizen, who first came to this country in 1945. From 1945 to 1956 or 1957, he spent part of his time here, first as a visitor, then as a treaty trader. In 1956 or 1957, he was admitted to the United States as a permanent resident.

With the exception of Callimanopoulos and his son, all of the officers and directors of Hellenic Lines reside in Greece as well as being Greek citizens. However, the directors from time to time vested in Callimanopoulos a broad power of attorney to run the company as General Manager.

Hellenic Lines maintains an office in Piraeus and a slightly smaller office in New York City, in addition to smaller offices in this country and abroad. In August 1959, the New York office employed 63 people at a payroll cost of approximately $28,000 per month. The company's annual statement was prepared in New York. Hellenic Lines maintains bank accounts in New York banks and has borrowed extensively from New York banks.

Hellenic Lines at the time of the accident operated from New York 22 or 23 vessels engaged in three liner services:

to the Mediterranean; to the Persian Gulf; and to the Red Sea and India and Burma. The company's agents at ports of call reported to the New York office on all matters concerning these three liner services. The *Hellenic Spirit* was engaged in the Red Sea liner service.

The starting point of any discussion of the applicability of American law to seaman's accident must be *Lauritzen* v. *Larsen*, 345 U. S. 571 (1953), in which the Supreme Court listed and appraised seven factors which should be considered in balancing the need for fairness to a plaintiff and the legitimate interests of the United States against the policies underlying international comity. Those seven factors are: the place of the wrongful act—a factor to which the Supreme Court attributed little weight, because of the disruptive effects adherence to such a standard would have upon the uniform regulation of shipboard activities;[1] the law of the flag, which factor, the Supreme Court said, must prevail in the absence of some "heavy counterweight," and which generally accords with principles of comity; the allegiance or domicile of the injured party; the allegiance of the defendant shipowner; the place and terms of the contract; the relative inaccessibility of the foreign forum, a factor which the Court found relevant not on the issue of

---

[1] See *Romero* v. *International Term. Co.*, 358 U. S. 354, 384 (1959):

> "To impose on ships the duty of shifting from one standard of compensation to another as the vessel passes the boundaries of territorial waters would be not only an onerous but also an unduly speculative burden, disruptive of international commerce and without basis in the express policies of this country. The amount and type of recovery which a foreign seaman may receive from his foreign employer while sailing on a foreign ship should not depend on the wholly fortuitous circumstance of the place of injury."

which law is applicable but rather on whether the court after finding its own law inapplicable should apply the law of some other jurisdiction; and finally the law of the forum, to which the Court attributed very little weight.

Lauritzen did not attempt to indicate whether or not American law should apply under all combinations of listed factors not before the Court. Cases both before and after *Lauritzen,* however, have established that certain combinations of factors either are or are not enough to justify application of American law. See Note, Admiralty Choice of Law: *Lauritzen* v. *Larsen* Applied, 47 Va. L. Rev. 1400 (1961).

The present case presents a combination of factors the significance of which is not conclusively established by existing cases. Defendants contend, and the trial court held, that the record reveals no factors "establishing a connection with the United States . . . sufficient to outweigh the 'venerable and universal rule' " which gives cardinal importance to the law of the flag, *Tjonaman* v. *A/S Glittre,* 340 F. 2d 290, 292 (2d Cir.), *cert. denied,* 381 U. S. 925 (1965). Plaintiff is an alien, who is not even an American resident. His employment contract by its terms limits his rights to those arising under Greek law—a factor to which weight must be given because it represents plaintiff's jurisdictional choice. Nor can, in this case, the Greek flag of the *Hellenic Spirit* be said to be a "flag of convenience," within the meaning of cases like *Bartholomew* v. *Universe Tankships Inc.,* 263 F. 2d 437, 440 (2d Cir.), *cert. denied,* 359 U. S. 1000 (1959), and *Southern Cross SS Co.* v. *Firipis,* 285 F. 2d 651 (4th Cir. 1960), *cert. denied,* 365 U. S. 869 (1961). The *Hellenic Spirit* had contacts with Greece

apart from being registered there and flying its flag. It stopped there to pick up crews, and not infrequently to discharge cargo. The officers and directors of the company which owned the ship were Greek, as were all of the shareholders of the parent company Hellenic Lines. Greece certainly has enough contacts with the ship so that our courts should hesitate out of considerations of comity before applying and foisting upon it the heavy potential liabilities of the American law of maritime personal injuries. Cf. *McCulloch* v. *Sociedad Nacional de Marineros de Brazil,* 372 U. S. 10 (1963) (National Labor Relations Act does not apply to maritime operations of ships owned by foreign subsidiaries of American corporations, crewed by alien seamen).

In favor of jurisdiction are the facts that plaintiff was injured here and spent almost four months in an American hospital; that the headquarters of the ship's activities were located here; and that the general manager and 96% shareholder, although a Greek citizen, is a permanent resident here. The few courts which have previously passed upon the problem have attached considerable significance to the base of business operations, see *Southern Cross SS Co., supra,* and *Pavlou* v. *Ocean Traders Marine Corp.,* 211 F. Supp. 320, (S. D. N. Y. 1962) (provision in contract between Greek seaman and Liberian corporation owned by Greeks, Canadians and Americans, stating that Greek law governs), as well as to the residence of the ultimate owners, *id.* But cf. *Cruz* v. *Harkna,* Admiralty No. 176-315, S. D. N. Y., Feb. 24, 1954 (Honduran law applies despite fact that some of ship's owners, all of whom were Estonian refugees, resided in America).

Wherever, as here, there are various factors to be weighed for and against jurisdiction, the decision must be controlled by the more weighty. This court in its recent *Tjonaman* decision, *supra*, faced a similar problem and resolved it against jurisdiction in our courts. The Supreme Court has given no indication that the law of the flag (when not a flag of convenience) is still not to be considered of paramount importance. Also not to be ignored, is the fact that this Greek seaman whose residence is in Greece, who is or is not presumed to be familiar with the rights and privileges under Greek law of those who serve in the crew on Greek ships, signed articles in which he agreed to be subject to those laws. He doubtless did not have the slightest knowledge of the provisions of American statutes enacted for the benefit of American seamen by our Congress for their protection. It is not unfair to have him abide by his agreement. As said by the Greek government in its *amicus* brief with respect to these agreements: "These collective bargaining agreements contemplate the hiring of Greek seamen under Greek law aboard Greek flag vessels, and contemplate the payment to these seamen, in the event they are injured, of benefits under Greek law and in accordance with the Greek social welfare programs." International comity requires respect for such agreements.

Although plaintiff argued here that his right to a jury trial was violated by the district judge deciding the case on the basis of stipulated facts, we think it was clear that he agreed to have the issue of the application of United States law decided on the stipulations.

Dismissal affirmed.

WATERMAN, *Circuit Judge* (dissenting):

I respectfully dissent.

To me the present case presents a combination of factors that justifies the application of United States law rather than the municipal law of another nation. To be sure, the suit has been brought by a Greek alien seaman injured while serving aboard a vessel of foreign registry and ownership. But the accident occurred in the territorial waters of the United States while the S.S. Hellenic Spirit was berthed at the 57th Street pier, Brooklyn, New York. Furthermore, Hellenic Lines, Ltd., the foreign shipowner, has a substantial executive office in the United States, from which extensive ship operations are conducted. And, in my view, it is of the greatest importance that Callimanopoulos, the general manager of Hellenic Lines and the owner of more than 95% of Hellenic Lines stock, has regularly resided in the United States since 1945 and has enjoyed the status of a permanent resident alien here since 1956 or 1957.

United States courts have pierced through the facade of foreign registration and foreign incorporation and have applied United States law, including 46 U. S. C. §688 application, when American-based shipowners who are United States citizens have sought the protection from seamen's suits of less onerous laws of foreign states and have registered their vessels elsewhere than here. E.g., *Bartholomew* v. *Universe Tankships, Inc.*, 263 F. 2d 437 and cases cited at 442 (2 Cir.), *cert. denied*, 359 U. S. 1000 (1959). I would hold that here, in this case, where the injury occurred at

dockside in the United States, United States law should be applied when the defendant shipowner, though an alien, has continued to register his vessels abroad while he currently enjoys the considerable benefits of permanent resident alien status here, a status deliberately sought by him.[1] I cannot follow the argument that, in this respect, the application of United States law to this event that occurred in our territorial waters should depend upon whether the vessel upon which the event occurred is owned by a United States citizen or is owned by a United States resident alien. We accord a lawful permanent resident alien the same constitutional protections we accord a citizen of the United States. See *Kwong Hai Chew* v. *Golding*, 344 U. S. 590, 596 (1953). Moreover, the duties and obligations of a resident alien have not been thought to "differ materially from those of native-born or naturalized citizens." *Leonhard* v. *Eley*, 151 F. 2d 409, 410 (10 Cir. 1945). To be sure, a resident alien in some respects does not have legal parity with a United States citizen; for example, the Constitution requires that only citizens may be candidates for election to the House of Representatives and to the Senate; and an alien may be sued in any U. S. judicial district. Nevertheless, established authority, see, e.g., *Leonhard* v. *Eley, supra*, suggests that any United States law,

---

[1] In the present case the fact that the defendant, Hellenic Lines, Ltd., is incorporated in Greece does not successfully disguise the fact that the corporation is almost solely owned by a single individual and that that individual is a resident alien in the United States. This case does not involve the applicability of our law to a corporation publicly owned by many individuals permanently residing in several different countries or even in one such country.

such as the Jones Act, that imposes duties and obligations upon persons, should be evenly applied to United States citizens and resident aliens.

So, unless the same obligations that United States law imposes on shipowners who are United States citizens are imposed on resident alien shipowners, a resident alien shipowner like Callimanopoulos will be able to enjoy the considerable benefits of lawful permanent resident alien status in this country without being subject to the duties and obligations exacted of an otherwise similarly situated competitive shipowner who is an American shipowner. The statement of this last proposition would seem to be enough to require a reversal instead of an affirmance of the order below. Moreover, under these circumstances, I do not regard as significant the fact that when this Greek seaman signed on he agreed to limit his rights to those arising under Greek law. Surely we would not consider such to be decisive, or even important, if the shipowner behind the Greek-incorporated corporation was a United States citizen inasmuch as the accident occurred while the vessel was berthed at a New York harbor pier.

I repeat: Shipowners who are resident aliens and shipowners who are United States citizens should be subject to the same liabilities for injuries suffered by their employees on their vessels when the vessels are at United States piers. If a United States shipowner is liable under the Jones Act to a foreign seaman serving on a foreign-registered vessel injured in our territorial waters, a permanently resident alien should also be so liable.

I find no reported case denying a seaman his recovery in which the significant factors are enough similar to this

case to require us to affirm the order below. In major part I agree with the exhaustive discussion of the authorities in the majority's opinion. Unlike the majority, however, I am not persuaded that here the ship had enough contacts with Greece so that we should hesitate "before applying and foistering upon [Callimanopoulos] the heavy potential liabilities of the American law of maritime personal injuries."

I would reverse the order below dismissing the action and remand for further proceedings.

APPENDIX B

Judgment of the United States Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixteenth day of November, one thousand nine hundred and sixty-six.

Present:

HON. J. EDWARD LUMBARD,
Chief Judge,

HON. STERRY R. WATERMAN,
HON. LEONARD P. MOORE,
Circuit Judges.

[SAME CAPTION]

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk

APPENDIX C

Order of the United States Court of Appeals Denying Reargument and Rehearing In Banc

[SAME CAPTION]

PETITION FOR REHEARING

LEBOVICI AND SAFIR, New York, N. Y., for plaintiff-appellant.

Petition denied.

J. E. L.
L. P. M.
U.S.C. JJ.

I dissent and would grant the petition.

S. R. W
U.S.C. J.

Dec 28 1966

[SAME CAPTION]

PETITION FOR REHEARING IN BANC

LEBOVICI AND SAFIR, New York, N. Y., for plaintiff-appellant.

All of the active judges concurring, except Judges Waterman, Smith and Hays, who vote to grant, the petition for rehearing in banc is denied.

J. EDWARD LUMBARD
Chief Judge

APPENDIX D

Opinion and Order of Hon. Irving Ben Cooper, U. S. D. J., Dated March 4, 1965

[Same Caption]

Irving Ben Cooper, *D.J.*

This suit arises out of personal injuries allegedly sustained by plaintiff.

Trial began on February 1, 1965. The parties then agreed in open court to divide the trial into two stages, (1) a determination by the Court whether the Jones Act (46 U.S.C. §688) and the general maritime law (hereafter American law) are applicable, and (2) a resolution (if necessary) by the Court and jury of liability of damages.

Accordingly, the parties stipulated to facts relating to the issue of applicable law. These, relied upon by plaintiff to "make out a prima facie case" [see Transcript of Trial Proceedings (hereafter Transcript), February 1, 1965, p. 4], or more accurately, to be the basis of the Court's determination whether American law applies, were made part of the record as Court's Exhibit 1.

After oral argument, the parties submitted supplementary trial memoranda (in accord with leave of Court to do so until the close of the Court's day on February 3). Subsequently, a retyped copy of Court's Exhibit 1 was marked Court's Exhibit 2 and supporting exhibits were jointly marked Court's Exhibit 3.

On February 4, defendants belatedly attempted to submit proof of Greek law in order to show that a foreign forum was accessible and foreign law would accord plaintiff re-

lief. See *Panagiotis Evangelinos* v. *Andrevapor Cia. Nav., S.A. and the S.S. National Hope,* 2 Cir., 1961, 291 F. 2d 624. This offer was rejected by the Court in view of its untimeliness. (See Transcript pp. 1-11). Moreover, without regard to enforceability or applicability, stipulation 45 states that Greek law provides rights and remedies to Greek seamen injured aboard a Greek vessel. See *Kontos* v. *S.S. Sophie C.,* E.D. Pa., 1964, 236 F. Supp. 664.

Plaintiff did not plead or request, either on oral argument or in his memoranda, that the Court take judicial notice or accept proof on foreign law so that any rights thus accorded plaintiff could be remedied in this forum should American law be found inapplicable. Plaintiff has not requested that the general maritime claims be transferred to the Admiralty Docket.

Plaintiff has chosen to stand on American law. We thus direct our attention to the basic issue of whether there are sufficient facts before this Court to justify the application of American law.

Applicability of American Law

The Court has carefully reviewed Court's Exhibit 1-3, the parties' memoranda and the applicable law. There is no need to fully reiterate the detailed stipulations of fact.

Briefly, plaintiff is a Greek citizen and domiciliary who served as a seaman abroad the S.S. Hellenic Spirit. He claims damages for personal injuries allegedly sustained aboard the vessel on September 26, 1959, in New York harbor, as a result of defendants' negligence and the unseaworthiness of the ship. He also seeks wages until the

end of the voyage, maintenance and cure, and recovery for wilful failure to treat and provide maintenance. These latter claims cover, in part, a period after plaintiff returned to Greece.

The S.S. Hellenic Spirit, owned by defendant Transpacific Carriers Corp. (hereafter Transpacific), a Panamanian corporation, was operated and controlled by defendant Hellenic Lines, Ltd., (hereafter Hellenic), a shipping concern incorporated under the laws of Greece. She flew the Greek flag.

Despite admitting by paragraph 4 of its amended answer that it employed plaintiff, Transpacific contends that plaintiff was in fact employed by Hellenic (see stipulations 41-2, and supporting exhibit 8 in Court's Exhibit 3). We agree. Neither Hellenic nor plaintiff now appear to contend otherwise.[1]

We cannot find, as plaintiff contends, that the S.S. Hellenic Spirit was a "runaway vessel"—one operated under a flag of convenience. In *Lauritzen* v. *Larsen,* 1953, 345 U.S. 571, the Supreme Court noted that some American shipowners sought foreign registration of their vessels for

---

[1] Plaintiff's complaint bases jurisdiction solely on the Jones Act. The finding of an employer-employee relationship is necessary to establish a claim on which relief thereunder can be granted. See 2 Norris, The Law of Seamen §§666, 682. Failure of plaintiff to prove such a relation requires dismissal of the Jones Act claim [and the pendent maritime claims] as against Transpacific. See *Romero* v. *International Terminal Operating Co.,* 1958, 358 U.S. 354; *Batholomew* v. *Universe Tankships, Inc.,* 2 Cir., 1958, 263 F. 2d 347, 443. Even if Transpacific were plaintiff's employer, American law would be inapplicable. See *Kontos* v. *S.S. Sophie C., supra,* p. 3, p. 17 *infra.* This would be equally true as to the maritime claims had diversity jurisdiction, belatedly argued by plaintiff, been found to exist. See p. 16 *infra.*

the purpose of avoiding American law. Court have had no difficulty disregarding paper maché formalities of nominal foreign registration to enforce against American shipowners or operating companies the obligations created by American law. Thus, the Jones Act was applied in *Bathlomew* v. *Universe Tankships, Inc.*, 2 Cir., 1958, 263 F. 2d 437, cert. denied, 1959, 359 U.S. 1000, where American citizens were the shareholders of a Panamanian corporation which in turn held the stock of defendant shipowner, a Liberian corporation; in *Carroll* v. *United States,* 2 Cir., 1943, 133 F. 2d 690, where the vessel was owned by the United States whose agent operated it under a Panamanian flag; and *Gerradin* v. *United Fruit Co.,* 2 Cir., 1932, 60 F. 2d 927, where the vessel, owned by a New York company, was operated by a New Jersey corporation as demise charterer under a Honoduran flag.

While each case must be decided on its own facts, these cases teach that beneficial ownership and control of the vessel by American citizens or corporations will be given legal significance despite schemes, however complex or imaginative, to avoid American laws through the formalities of foreign registration and operation. See also: *Southern Cross SS. Co.* v. *Firipis,* 4 Cir., 1960, 285 F. 2d 651, cert. denied, 1961, 365 U.S. 869; *Bobolakis* v. *Compania Panamena San Gerassimo, S.A.,* S.D.N.Y., 1958, 168 F. Supp. 236; and *Zielinsky* v. *Empress Hondurena De Vapores,* S.D.N.Y., 1953, 113 F. Supp. 93.

At the outset, we cannot find that Hellenic's Greek incorporation or the vessel's flying of the Greek flag are mere formalities.

Appendix D—Opinion and Order of Hon. Irving Ben Cooper, U. S. D. J., Dated March 4, 1965

We reject the implication made by plaintiff on oral argument and in his supplementary memorandum that contacts with the United States sufficient to treat a foreign corporation as American for jurisdictional purposes under 28 U.S.C. 1332(a) (2) would also require a finding of contacts substantial enough to treat a foreign corporation as American for Jones Act purposes. See *Batholomew* v. *Universe Tankships, Inc., supra,* 263 F. 2d at 442.

Hellenic had significantly more than formal business activities in Greece and other foreign countries. See stipulations 12, 13, 14, 18, 19, 34, 36, 37.

The S.S. Hellenic Spirit was operated in the Red Sea Service (stipulation 17.) Red Sea Service vessels call at Greek ports to crew the vessels (as in this case) and to load or discharge available cargo (stipulation 18). It is true that the ship's itinerary during the voyage in question does not show that it carried cargo to or from a Greek port, but in view of the total circumstances in this case, that is insufficient to regard its Greek flag as illusory. Cf. stipulation 40.

Even had plaintiff shown the registration of the vessel under Greek law to be but a formality, nothing in the stipulations supports plaintiff's contention that each of the defendants was "entirely controlled and operated by citizens of a state of the United States." (Complaint, ¶5).

This is not a case such as *Voyiatzis* v. *National Shipping & Trading Corp.,* S.D.N.Y., 1961, 199 F. Supp. 920, wherein a Greek seaman was entitled to Jones Act remedies in a suit against a Panamanian corporation, which was the shipowner and all of whose stock was owned by a United

States citizen, and against a Delaware corporation, its general agent.

Nor does this case require the Court to state that either stock ownership of the corporation owning the vessel by United States citizens, or control of the vessel by United States citizens, standing alone, requires application of American law. See Plaintiff's Supplementary Trial Memoranda, Point III, pp. 11-12; *Batholomew* v. *Universe Tankships, Inc., supra,* 263 F. 2d at 440, 443 n. 4; *Mpampouros* v. *Steamship Auromar,* D.C. Md., 1962, 203 F. Supp. 944.

While Mr. Pericles Callimanopulos, Hellenic's general manager and owner of 95% of its stock, was a legal resident of the United States at the time of the accident in suit, he was ineligible for American citizenship and had not declared an intention to apply when and if eligible. He was a Greek citizen, as were all of the officers and directors of Hellenic. Except for Mr. Callimanopulos and his son, those officers and directors all resided in Greece.

By analogy, plaintiff cites *Gambera* v. *Bergoty,* 2 Cir., 1942, 132 F. 2d 414, where the seaman's legal residence in the United States, without actual American citizenship, was apparently accorded significance in determining to apply the Jones Act. Like other pre-*Lauritzen* cases, the controlling considerations in the decision were unclear. Indeed, in *O'Neill* v. *Cunard White Star, Ltd.,* 2 Cir., 1947, 160 F. 2d 446, the Jones Act was held inapplicable despite seaman's long residence in the United States. In *Taylor* v. *Atlantic Maritime Co.,* 2 Cir., 1950, 179 F. 2d 597 at 600, Judge Learned Hand suggest that *Gambera* and other cases can be explained by looking to the situs where the seaman signed onto the vessel, a factor given little weight

in post-*Lauritzen* cases and a contact absent here. See *Berendsen* v. *Rederiaktiebolaget Volo,* 2 Cir., 1958, 257 F. 2d 136; *Smith* v. *Furness Withy & Co.,* S.D.N.Y., 1953, 119 F. Supp. 369; Boczek, Flags of Convenience, 180-182 (1962); Note, "Admiralty and Choice of Law: Lauritzen v. Larsen Applied," 47 Va. L. Rev. 1400 (1961).

Whatever may be the vitality of cases giving weight to a seaman's legal residence in the United States, despite foreign citizenship, none has been found piercing the citizenship of foreign nationals who reside here and own controlling stock in a shipping concern incorporated under the laws of a foreign country.

On the facts of this case, we would not be justified in holding that there is "American ownership and/or control" of Hellenic sufficient to support a finding that the S.S. Hellenic Spirit flew a flag of convenience. See *Lauritzen* v. *Larsen,* 345 U.S. at 381; *Cruz* v. *Harkna,* S.D.N.Y., 1954; unreported memorandum, #21103, Admiralty Docket No. 176-315, noted in 122 F. Supp. 288.

We turn to the principles enunciated in *Lauritzen* v. *Larsen, supra,* to determine the applicable law. There, after a statement of general principles, 345 U.S. at 582, the Court considered "several factors which, alone or in combination, are generally conceded to influence choice of law to govern . . . a maritime tort claim." Listed and discussed were: (1) the place of the wrongful fact; (2) the law of the flag; (3) allegiance or domicile of the injured party; (4) allegiance of the defendant shipowner; (5) place of contract; (6) inaccessibility of foreign forum and (7) the law of the forum. Of these factors, those numbered (2), (3) and (4) were accorded particular significance.

Appendix D—Opinion and Order of Hon. Irving Ben Cooper, U. S. D. J., Dated March 4, 1965

Plaintiff, however, would have us adopt the approach employed in *Bartholomew* v. *Universe Tankships, Inc., supra.* In *Tjonaman* v. *A/S Glittre,* 2 Cir., — F. 2d, —, sl. op. 677-82 (decided January 11, 1965), the Court of Appeals for the Second Circuit noted that *Bartholomew* had not limited its broad discussion of approach to the flag of convenience case then before the Court. Moreover, *Bartholomew* did consider and apply the *Lauritzen* factors in the context of the "substantial contacts" test it developed.

Brillis v. *Chandris (U.S.A.) Inc.,* S.D.N.Y., 1963, 215 F. Supp. 520, 522 and *Pavlou* v. *Ocean Traders Marine Corp.,* S.D.N.Y., 1962, 211 F. Supp. 320, 324, had interpreted *Bartholomew* as limiting the dominating importance of the law of the flag to cases with facts similar to the *Lauritzen* case. The Court of Appeals, however, found that *McCulloch* v. *Sociedad Nacional,* 1963, 372 U.S. 10, leave "no doubt" that the starting point of weighing and evaluating the factors governing the choice of law is consideration of the law of the flag.

In *Lauritzen* v. *Larsen, supra,* the Supreme Court said that

> Perhaps the most venerable and universal rule of maritime law relevant to our problem is that which gives cardinal importance to the law of the flag.

In *Tjonaman, supra,* the Court of Appeals stated, as the ultimate issue,

> . . . whether the substantiality of other existing factors establishing a connection with the United

States is sufficient to outweigh the "venerable and universal rule."

In this case, we find that they are not.

Here, defendants point to: (1) the vessel was flying the Greek flag; (2) Hellenic is a bona fide Greek corporation, all of whose stock is owned by Greek citizens; (3) plaintiff, a Greek citizen, who boarded the vessel at a Greek port, signed an employment contract at Piraeus, Greek, specifying it was governed exclusively by Greek laws and providing for any claims arising under the agreement to be tried exclusively by the Greek Law Courts; and (4) although plaintiff would not stipulate as to enforceability or applicability Greek law provides certain rights and remedies to Greek seamen injured aboard a Greek vessel.

Plaintiff, on the other hand, says the law of the flag and other relevant factors are outweighed by the substantiality of the facts that (1) the accident occurred in territorial waters of the United States; (2) the effective control of the vessel on which plaintiff was injured was by legal residents of the United States through Helleinic; (3) Hellenic's executive office in New York carried on and centralized extensive business operations in this country and held accountable its agents abroad.

We note first that had other operative facts entitled plaintiff to invoke the benefits of American law, an agreement relinquishing or waiving such rights would not necessarily be given legal effect. See *Southern Cross SS. Co.* v. *Firipis, supra; Pavlou* v. *Ocean Traders Marine Corp., supra;* and *Voyiatzis* v. *National Shipping & Trading Corp., supra.*

Next, the fact that the accident occurred in territorial waters is entitled to little weight. As the Supreme Court noted in *Romero* v. *International Terminal Operating Co.*, 1958, 358 U.S. 354, 384.

> In *Lauritzen* v. *Larsen* the injury occurred in the port of Havana and the action was brought in New York. Romero was injured while temporarily in American territorial waters. This difference does not call for a difference in result. . . . The test of location of the wrongful act . . . is of limited application to shipboard torts . . . because of the variety of legal authority over waters she may navigate . . . [s]uch a rule does not fit the accommodations that become relevant in fair and prudent regard for the interests of foreign nations in the regulation of their own ships and their own nationals, and the effect upon our interests of our treatment of the legitimate interests of foreign nations.

It was purely fortuitous that the accident occurred here rather than in Cienfuegos, Cuba, where the voyage terminated, or on the High Seas, en route to Calcutta.

Plaintiff's second and third points merit deeper consideration. We have already discussed why the facts here do not warrant piercing the corporate veil and then looking behind the Greek citizenship of Hellenic's stockholders, officers and directors. Plaintiff, however, urges that the effective control of Hellenic by a legal resident of the United States, coupled with Hellenic's business activities here generally, are "substantial contacts" under the doctrine of *Bartholomew* v. *Universe Tankships, Inc., supra,* especially when considered in its application in *Pavlou* v. *Ocean Traders Marine Corp., supra.*

Appendix D—Opinion and Order of Hon. Irving Ben Cooper, U. S. D. J., Dated March 4, 1965

In *Pavlou*, the Court did say that "the base of operations of persons directing the operations is a factor making the Jones Act applicable." However, the Court there found that the management of the vessel, which was flying a Liberian flag and owned by a Liberian corporation created for that purpose, had been turned over to a company which operated as and was in fact a domestic corporation of the State of New York.

Pavlou, moreover, relied on *Southern Cross SS. Co.* v. *Firipis, supra*, a Fourth Circuit flag of convenience case wherein American citizens were stockholders beneficially interested in the operation of the vessel—a factor definitely not present here.

Finally, the vitality of *Pavlou* in diluting the weight to be given the law of the flag was diminished in *Tjonaman* v. *A/S Glittre, supra*, as stated above.

In *Lauritzen*, emphasis was not given to the "base of operations" factor. Respondent there had put stress on the assertion that the petitioner's commerce and contacts with the United States were frequent and regular, thus sustaining a basis for applying the Jones Act. The Supreme Court responded that (345 U.S. at 581):

> . . . [T]he virtue and utility of sea-borne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limits of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international commerce by sea. Hence the courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality.

Appendix D—Opinion and Order of Hon. Irving Ben Cooper, U. S. D. J., Dated March 4, 1965

Moreover, maritime law

> . . . in such matters as this does not seek uniformity. . . . [I]t aims at stability and order through usages which considerations of comity, reciprocity and long-range interest have developed to define the domain each nation will claim as its own. [345 U.S. at 582.]

So it is here, for even though we give full consideration to the "base of operations" factor as presented by the circumstances in this case, and view the other contacts with the United States, their totality is insufficient to outweigh "the most venerable and universal rule" that the law of the flag controls matters relating to the internal economy or discipline of the ship. See *Tjonaman* v. *A/S Glittre, supra; Mpampouros* v. *Steamship Auromar, supra.*

JURISDICTION

We note in passing that defendants contend we are without jurisdiction.

Plaintiff asserts a substantial claim under the Jones Act. As stated in *Romero* v. *International Terminal Operating Co., supra,* 358 U.S. at 359:

> . . . Such assertion alone is sufficient to empower the District Court to assume jurisdiction over the case and determine whether, in fact, the Act does provide the claimed rights. "A cause of action under our law was asserted here, and the court had the power to determine whether it was or was not well founded in law and in fact." *Lauritzen* v. *Larsen,* 345 U.S. 571, 575.

Had the Jones Act been applicable, this Court would have regarded the claims under the general maritime law as

"pendent." See *Romero* v. *International Terminal Operating Co., supra.*

Although neither raised nor pleaded in oral argument, plaintiff's pre-trial and supplementary trial memoranda assert jurisdiction by reason of diverse citizenship of the parties. Plaintiff argues that, assuming the Court inquires and finds defendants to have their principal place of business in New York, they must be deemed citizens of New York under 28 U.S.C. §1332(c).

This argument cannot be sustained. 28 U.S.C. §1332 (c) does not apply to foreign corporations. *Eisenberg* v. *Commercial Union Assur. Co., S.D.N.Y.*, 1960, 189 F. Supp. 500; *Chemical Transportation Corp.* v. *Metropolitan Petroleum Corp.*, (unreported opinion) S.D.N.Y., November 13, 1964, Civil Docket No. 150-55. See 1 Moore's Federal Practice §0.77[2.-3].

Conclusion

On the basis of the above opinion and in view of the facts adduced at the first stage of the trial, both quantitatively and qualitatively, we find insufficient contacts with the United States to justify application of the Jones Act.

Since Jones Act jurisdiction is the only jurisdiction invoked by plaintiff, our finding of inapplicability of the Jones Act requires dismissal of the "pendent" claims under the general maritime law.

Alternatively, as to the "pendent" claims, even had diversity existed, under the doctrine in Romero, we find insufficient contacts with the United States to justify application of the general maritime law.

Appendix D—Opinion and Order of Hon. Irving Ben Cooper, U. S. D. J., Dated March 4, 1965

In view of plaintiff's reliance on American law, foreign law having been neither pleaded nor asserted as a basis of relief, and no other jurisdictional ground appearing to the Court, the complaint, on the above opinion, is dismissed on the merits.

Submit order promptly on three (3) days notice.

New York, New York
March 4, 1965

IRVING BEN COOPER
United States District Judge

SUPREME COURT, U.S.

FILED

APR 4 1967

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1125

ELIAS TSAKONITES,

Petitioner,

—against—

TRANSPACIFIC CARRIERS CORP., and HELLENIC LINES LTD.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOHN R. SHENEMAN
Attorney for Respondents
19 Rector Street
New York, New York 10006

EDWIN K. REID
GEORGE D. BYRNES
Of Counsel

INDEX

PAGE

Argument 1

Reasons for Denial of the Writ 5

Conclusion 10

TABLE OF CITATIONS

Cases:

Bartholomew v. Universe Tankships, Inc., 263 F. 2d 437 5

Lauritzen v. Larsen, 345 U.S. 571 (1953) 1, 2, 3, 5

MacCulloch v. Sociedad Nacionale d Marineros de Brazil (1963) 372 U.S. 10 ..... 3, 5

Southern Cross Steamship Co. v. Firipis, 285 F. 2d 651 5

Statutes:

Jones Act 46 U.S.C. 688 ..... 1, 2

National Labor Relations Act 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1125

ELIAS TSAKONITES,

Petitioner,

—against—

TRANSPACIFIC CARRIERS CORP., and HELLENIC LINES LTD.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

I

Argument

At the outset it must be noted that the District Court and the Court of Appeals decided the case upon a stipulation of facts between the parties in favor of the law of the flag instead of the Jones Act 46 U.S.C. 688 and the general maritime law of the United States.

The stipulation of facts proved that the vessel, her owner, operator and the majority stockholder had contacts both with the United States and with Greece.

The lower courts evaluated and weighed these contacts in accordance with the teachings of *Lauritzen* v. *Larsen*, 345

U.S. 571 (1953) in favor of the law of Greece, the flag law, upon a balancing of need for fairness to the petitioner and the legitimate interests of the United States against the policies underlying international comity.

In *Lauritzen* v. *Larsen* (*supra*), this Court stated at page 580, that the Jones Act 46 U.S.C., 688, ". . . would be applied by the Court to foreign agents, foreign ships and foreign seamen only in accordance with the usual doctrine and procedure of maritime law." This Court listed seven factors of influence in the choice of law to govern maritime torts. They are: (1) the place of the wrongful act, (2) law of the flag, (3) the national allegiance or domiciliary of injured seamen, (4) the national allegiance of the ship owner, (5) place of contract, (6) the inaccessibility of the foreign forum, (7) the law of the forum. After discussing the weight to be accorded to each of the seven factors, the Court concluded that three were of particular significance: (1) the law of the flag, (2) the national allegiance of the ship owner and (3) the allegiance or domicile of the injured seaman. This Court stated at page 584 and 585 that "cardinal importance" was to be attached to the law of the flag, that ". . . the weight given to the ensign overbears most other connecting events in determining applicable law" and that it ". . . must prevail unless some heavy counterweight appears." (Pgs. 585-586). This was a restatement of the settled American principle that the law of the flag controls matters relating to the internal economy and discipline of the ship.

The District Court and the Court of Appeals found, as fact and law, that the Greek flag of the Hellenic Spirit was not one of convenience but was a bona fide flag and that her operator and ultimate owner was a bona fide Greek corporation with substantial contacts with Greece. The

District Court further found that plaintiff was a resident and domiciliary of Greece; that he executed a contract of employment at Greece providing for his rights to be governed by the Greek Collective Bargaining Agreement and Greek law in accordance with Greek social welfare programs.

Since *Lauritzen* v. *Larsen* (*supra*) this Court has reemphasized the paramount importance of the law of the flag. Cf. *MacCulloch* v. *Sociedad Nacionale d Marineros de Brazil* (1963) 372 U.S. 10. (National Labor Relations Act does not apply to maritime operations of ships owned by foreign subsidiaries of American corporations, crewed by alien seamen).

Thus this Court has made it clear that the ultimate issue is whether other existing factors establishing a connection with the United States are sufficient to outweigh "the most venerable and universal rule" of the flag.

The Trial Court and the Court of Appeals reviewed and carefully considered the United States residence of the majority stockholder and the United States base of business operations of the vessel and held that these were not sufficient to outweigh the legitimate Greek flag.

The Greek citizenship and allegiance of the majority stockholder, the Greek citizenship and allegiance of the operating and ultimate owning corporation, the Greek citizenship and allegiance of the petitioner, himself, the Greek flag of the Hellenic Spirit, her Greek operations and crew, the contract of employment with the Greek seamen incorporating the Greek Collective Agreements, Greek law, Greek court jurisdiction, the contemplation of payment to the seaman, in the event of injury, of benefits under Greek law in accordance with the Greek social welfare programs, graphically demonstrates how vital an interest the Greek

government has in this matter and how important are the underlying policies of international comity.

The petitioner would have this Court ignore the above by equating the United States residence of the majority stockholder and the United States base of business operations of the vessel with American citizenship and with American operation and control. Petitioner finds the theoretical foundation for this equation in many United States laws which, it contends, applies equally to United States citizens and non-citizen residents.

It should be immediately noted, however, that these laws normally apply solely to the individual foreign non-resident or his business and do not effect the vital interests of a foreign government. A foreign sovereign has an interest in its individual citizens, its corporations, seamen, merchant marine, wherever located, particularly where this combination of interest is integrated with the foreign sovereign's social welfare programs as found in this case (A7). Furthermore, it should not be forgotten that the majority stockholder cannot hold public office nor can he vote. He may be sued in any United States judicial district. A deprivation of the right to hold public office and vote is a striking recognition of the majority stockholder's foreign citizenship and ties with the foreign sovereign and his second class constitutional status. He is prohibited from enjoying the full constitutional rights which go to the heart of democracy. Also the Greek flag Hellenic Spirit cannot carry certain United States cargoes and she cannot engage in United States coastal and inter-coastal trade.

II

Reason for Denial of the Writ

1. The Decision Below is Not in Conflict With that of this Court in *Lauritzen* v. *Larsen, (supra)*, the Court of Appeals for the Fourth Circuit in *Southern Cross Steamship Co.* v. *Firipis,* 285 F. 2d 651, and with the prior decision of the Second Circuit in *Bartholomew* v. *Universe Tankships, Inc.,* 263 F. 2d 437.

It is submitted that the case is readily distinguishable from the *Bartholomew* and *Firipis* cases which are "flag of convenience" cases where the foreign registration was only nominal and where the vessel belonged to the nation of the flag it flew, only for the purpose of avoiding the shipping laws of the United States. The District Court found, and the Circuit Court affirmed, that the Greek flag here was bona fide.

Any dilution of the predominance of the flag which might be found in the *Bartholomew* case is over-ridden by this Court's decision in *MacCulloch* v. *Sociedad Nacionale, etc.* (*supra*) which re-emphasizes the paramount importance of the law of the flag with respect to the internal economy and discipline of the vessel.

Nor does the present case conflict with *Lauritzen* since the lower courts in reaching their decisions here followed the stricture of *Lauritzen*:

> "Perhaps the most venerable and universal rule of Maritime law revelant to our problem is that which gives cardinal importance to the law of the flag." 345 U.S. at page 584.

2. The Questions Presented is Not of Sufficient Importance to Require Adjudication By This Court.

The District Court found, and the Circuit Court affirmed, that the registration and flag of the vessel here was legitimate. This Court has emphasized that a legitimate registration and flag is to be given cardinal or paramount importance in the process of weighing and evaluating the factors pointing for and against the application of United States or foreign law. Unless this Court is willing to displace this "most venerable and universal rule" with the concept that United States residency of the majority stockholder and United States base of operations of the vessel is supreme, and further, is willing to ignore the other substantial Greek contacts, not only of the vessel, its owner and operator but of the petitioner himself and his contract of employment, there is nothing of importance for this Court to decide.

It is respectfully submitted that such a displacement would be abhorrent, particularly in this case, to principles of international comity.

3. Petitioner has not been deprived of Constitutional Right of Jury Trial.

Petitioner's counsel in the Trial Court, having agreed to a detailed stipulation of fact bearing on the pivotal issue of the applicability of United States law, then entered into a stipulation in open Court as to the modus operandi of deciding such issue. It is respectfully submitted that it was crystal clear at the time such Court stipulation was made that petitioner's counsel was waiving jury trial and agreeing to have the issue of United States law tried and determined, *as a matter of fact and law,* by the trial judge on the sole basis of the detailed stipulations of fact previ-

ously agreed to by both parties. Indeed, so certain of this was the Circuit Court that it felt free to summarily dispose of petitioner's constitutional lament in the closing sentence of its opinion, i.e.,

> "Although plaintiff argued here that his right to a jury trial was violated by the district judge deciding the case on the basis of stipulated facts, we think it was clear that he agreed to have the issue of the application of United States law decided on the stipulations." (A7).

It is also significant to note that even the dissenting member of the Circuit Court apparently shared the view of the majority in this regard, as no mention of any constitutional fault by reason of a deprivation of jury trial is found in his dissenting opinion.

The full colloquy between the parties and the Trial Court on the first day of trial, which appellee, below, contended comprised the agreement to waive jury trial, is found on pages 6(a)-9(a) of the Appendix certified by the Court of Appeals. Such colloquy is quoted below for the convenience of the Court.

> "The Court: I would like to ask a very simple and direct question. I recognize that counsel have not had a chance to conform the copies of the stipulation.
>
> Before I hear any argument on this case addressed to any phase of the case, I would like to be informed as to whether what you now have in your hand—even though every i has not been dotted and every t crossed —contains *in complete substance,* if not in satisfactory form, what constitutes the first stage of this proceeding? By the 'first stage,' I mean *the resolution of the issues of fact and law* addressed to the challenge whether this Court should apply the Jones Act and the

General Maritime Law of the United States to the causes of action asserted here?

Mr. Lebovici: The categorical answer is, sir, that there is a lot but there is still more that is subject to subpoena that is not contained in the stipulation.

The Court: In other words, then, the first stage of the proceeding has not been completed?

Mr. Lebovici: There is sufficient, sir, however, if your Honor cares to consider this application—without calling that a motion for summary judgment—as to whether or not the plaintiff will make out a prima facie case. There is sufficient so that I am the person who says there is more, and *I am willing to risk this issue on argument before your Honor at this time.*

The Court: Very well. Whatever you gentlemen will agree as to the document, even though it has not been prepared, I want it marked as a Court's exhibit right now. I want you both to tell me on the record that it constitutes, *in substance* if not in satisfactory form, *all* that you wish to rely upon. I am referring to both sides with respect to what I have already defined as the first stage in the resolution of this case.

Mr. Reid: Your Honor, you have the first twelve items of stipulation that we left with you this morning.

The Court: Here they are (handing).

Mr. Reid: The exhibits began at No. 2. Somehow or other we overlooked No. 1. There is no No. 1.

Mr. Lebovici: Wait: There was some corrections on the first twelve pages.

The Court: Suppose we take a short recess and you iron that out. Do you need more than ten minutes for it?

Mr. Lebovici: No, your Honor.

(Recess.)

The Court: Gentlemen, have we gotten together?

Mr. Lebovici: We have, your Honor.

The Court: Will you initial it please, counsel for the plaintiff.

Mr. Lebovici: There is no signature line provided here.

The Court: Please initial the first page. Let the first page bear your initials and then hand it to Mr. Reid and let him initial it.

Mr. Reid: You pulled the last page off, Mr. Lebovici.

(Court's Exhibit 1 marked).

The Court: Now that Mr. Lebovici has initialed it, you may do so, Mr. Reid.

Will you now hand the exhibit to the clerk. That constitutes the stipulation of facts.

For the sake of the record, are we to understand that Court's Exhibit 1 relates entirely to the first stage of this proceeding, which is a resolution of the *issues of fact and law* addressed to the challenge as to whether this Court should apply the Jones Act and the General Maritime Law of the United States to the causes of action as stated here? Do I get a yes or no answer from you, counsel for plaintiff?

Mr. Lebovici: You get a yes.

The Court: And Mr. Reid?

Mr. Reid: Yes, sir."

(Emphasis supplied)

It is respectfully submitted that the above clearly shows, on the part of the petitioner's counsel, a conscious waiver of jury trial and a conscious agreement that the issue of the applicability of U. S. law be determined by the trial Court on the basis of the stipulated facts agreed to by both

parties. It is further submitted that no more than this is required by Rule 39 (a) of the Federal Rules of Civil Procedure.*

CONCLUSION

The judgment below should be sustained in all respects.

Respectfully submitted,

JOHN R. SHENEMAN
Attorney for Respondents
19 Rector Street
New York, New York 10006

EDWIN K. REID
GEORGE D. BYRNES
Of Counsel

---

* 39 (a) "By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States."

IN THE

Supreme Court of the United States

October 1966 Term

NO. 1125

ELIAS TSAKONITES, *Petitioner*

v.

TRANSPACIFIC CARRIER, CORP. and HELLENIC LINES, LTD., *Respondent*

AMICUS CURIAE PETITION AND BRIEF IN SUPPORT OF PETITIONER

Motion for Leave to File the Accompanying Brief as Amicus Curiae in Support of Petition for Writ of Certiorari in the United States Court of Appeals for the Second Circuit

ARTHUR J. MANDELL,
of MANDELL & WRIGHT
707 South Coast Bldg.
Houston, Texas

Alpha Law Brief Co., M & M Bldg., Houston, Texas 77002

IN THE

Supreme Court of the United States

October 1966 Term

NO. _____

ELIAS TSAKONITES, *Petitioner*

v.

TRANSPACIFIC CARRIER, CORP. and HELLENIC LINES, LTD., *Respondent*

AMICUS CURIAE PETITION AND BRIEF IN SUPPORT OF PETITIONER

Motion for Leave to File the Accompanying Brief as Amicus Curiae in Support of Petition for Writ of Certiorari in the United States Court of Appeals for the Second Circuit

---

STATEMENT OF INTEREST OF AMICUS CURIAE

Arthur J. Mandell of Mandell & Wright, Houston, Texas, a member of the bar of this Court, as Chairman of the Admiralty Section of the American Trial Lawyers Association and on behalf of the American Trial Lawyers Association respectfully petitions this Court for leave to file a brief, amicus curiae, on behalf of petitioner herein, and if granted, for this Honorable Court to consider the arguments and cases in point following this statement of interest.

The American Trial Lawyers Association is a national bar association, consisting of approximately 25,000 lawyers

primarily engaged in the practice of personal injury law. The Admiralty Section of this Bar Association consists of a substantial number of attorneys who specialize in maritime tort law. Said Association, particularly the Admiralty Section thereof, are vitally interested in the outcome of this case involving as it does, the important question of whether a shipowner, a legal permanent resident alien of the United States conducting a business as a shipowner from New York City, should not, like shipowners who are United States citizens, be subject to the same liabilities for injuries suffered by their employees on their vessels when such vessels are at a United States pier. Or to put it differently, since United States shipowners are liable under the Jones Act to foreign seamen serving on a foreign-registered vessel injured within the territorial waters of the United States, should not a legally admitted and permanent resident alien also be so liable.

The ever increasing number of foreign flag vessels now doing business in the United States crewed with foreign seamen but either owned or operated by American citizens or by legal residents of the United States conducting their business from the United States, make this an important question to the industry, the Admiralty Bar and to the many similarly situated crew members who are injured on board these vessels while they are within the territorial waters of the United States.

For the foregoing reasons it is respectfully prayed that the Honorable Court accept this Brief Amicus Curiae.

Respectfully,

ARTHUR J. MANDELL,
of MANDELL & WRIGHT
707 South Coast Bldg.
Houston, Texas

LIST OF AUTHORITIES

CASES	Page
Arthur v. Compagnie Generals Transatlantique, 72 F.2d 662	4
Bridges v. Wixson, 326 U.S. 135, 161, 65 S.Ct. 1443, 1445, 89 L.Ed. 2103 (1945)	2
Hellenic Lines, Limited v. Gulf Oil Corporation, 340 F.2d 398 (2nd Cir. Docket #28885)	6
Kyriakos v. Goulandris, 151 F.2d, 132-137	4
Lauritzen v. Larsen, 345 U.S. 571, 73 S.Ct. 921 (1963)	3, 5, 7, 8
Reed v. Yaka, 373 U.S. 410, 83 S.Ct. 1349 (1963)	5
Romero v. International Terminal Operating Co., 358 U.S. 354, 79 S.Ct. 468	7, 8
Uravic v. F. Jarka Co., 282 U.S. 234, 51 S.Ct. 111	4

STATUTE AND RULES	
The Jones Act, 46 U.S.C.A. 688	3, 4, 5
The Jones Act of 1920 (41 Statute 1007, 46 U.S. C.A. 688 et seq.)	6
The La Follette Act of 1915 (28 Statute U.S. C.A. 85)	6

MISCELLANEOUS	
Gilmore & Black	7
Harolds, "Some Problems Arising out of Foreign Flag Operations", 28 Fordham Law Rev. 295-305 et seq.)	6
Hearings, 85th Congress, First Session, March 27, 1957	6

IN THE

Supreme Court of the United States

October 1966 Term

NO. _____

ELIAS TSAKONITES, *Petitioner*

v.

TRANSPACIFIC CARRIER CORP. and HELLENIC LINES, LTD., *Respondent*

BRIEF OF AMICUS CURIAE AMERICAN TRIAL LAWYERS ASSOCIATION

QUESTIONS PRESENTED

Is a shipowner, a permanent resident alien of the United States, conducting extensive regularly scheduled shipping operations from the United States, enjoying all the privileges and immunities of United States citizens, immune from the duties and obligations provided for in the Jones Act applicable to American shipowners?

STATEMENT OF THE CASE

The controlling facts in this case have been stipulated. For the purpose of this brief we adopt petitioner's state-

ment of the facts set out in petitioner's application for writ of certiorari.

The bold facts are that the HELLENIC SPIRIT and some twenty-three other vessels were operated and are now being operated and directed from the City of New York by Pericles Callimanopoulos,

(a) a legally admitted and permanent resident of the United States since 1956, Appendix A

(b) owner of ninety-six percent (96%) of the Hellenic Lines, Ltd. stock, a Greek corporation, Appendix B

(c) with sole and absolute power over the management and control of the affairs of such corporation, which owns all of the stock of Trans-Pacific Carrier Corporation, a Panama corporation, the nominal owner of the HELLENIC SPIRIT. Appendix C

Tsakonites, a member of the crew of the HELLENIC SPIRIT, was injured while the vessel was in the process of discharging cargo at a dock in Brooklyn, New York. We may assume that it will be conceded that except for Callimanopoulos' inability to be a candidate for public office, he enjoyed and still enjoys all of the rights, privileges and immunities of a citizen. As a lawfully admitted alien in the United States, he became vested with the rights guaranteed by the Constitution to all people within its borders. The Bill of Rights does not acknowledge any distinction between citizens and resident aliens. It extends its inalienable privileges to all "persons" and guards against any encroachment on those rights by Federal or State authorities. *Bridges v. Wixson,* 326 U.S. 135, 161, 65 S.Ct. 1443, 1445, 89 L.Ed. 2103 (1945). It is strange indeed, and we

submit not in keeping with Congressional intent: for a resident alien who has the full protection of the constitution and laws of the United States to be judicially placed in a more advantageous position than his American citizen shipowner counterpart by immunizing him from the duties and obligations of the Jones Act when his shipping operations are conducted from the United States, its vessels regularly picking up from and delivering cargo to the United States, in competition with American shipowners who, because of their citizenship are by law bound to comply with the provision of Section 688, Title 46 U.S.C.A. (Jones Act).

The broad language of the statute providing "any seamen who shall suffer personal injury in the course of his employment may, etc." cannot possibly be interpreted to exclude seamen working on vessels which are either owned and/or operated by persons enjoying the privileges and immunities of all residents and citizens within the United States. We are, of course, aware of this Court's holding in *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921 (1963), in which Judge Jackson takes note of the broad language of the statute. In *Lauritzen* this Court held that the statute would not reach a person performing the prescribed acts aboard a ship of a foreign state *on the high seas*. But before and since *Lauritzen* the Courts have invariably held seamen on foreign flag vessels owned and/or operated by corporations whose stock, to a substantial extent, is owned by American citizens entitled to the protection of the Jones Act. To impose the duties and obligations of an Act of Congress (which does not expressly exclude non-citizens) on American citizens operating foreign flag ships but not on legally admitted resident aliens who enjoy substantially the same privileges and immunities as citizens would be

destructive of the purposes the Jones Act sought to accomplish.

It constitutes the rankest type of discrimination against shipowner citizens of the United States operating the American Merchant Marine and to American seamen. As stated by Augustus Hand, an outstanding Admiralty Judge in *Kyriakos v. Goulandris,* 151 F.2d (1945) at Page 137:

> ". . . The intention of Congress to benefit American seamen would not be served by a contrary construction of the statute; since it would tend to encourage the hiring of foreign seamen in American ports in preference to American seamen because the aliens would not have the right of suit against their employers if injury should occur in those ports, while American Seamen would. A similar line of reasoning has been set forth by the Supreme Court in Strathear S.S. Co. v. Dillon, supra, 252 U.S. at pages 354, 355, 40 S.Ct. pages 351, 352, 64 L.Ed. 607, in connection with another section of the statute."

The Fifth Circuit in *Arthur v. Compagnie Generals Transatlantique,* 72 F.2d 662, held "nationality" unimportant and the Jones Act applicable in an action brought by an alien stevedore injured on a foreign ship in the Canal Zone. *Uravic v. F. Jarka Co.,* 282 U.S. 234, 51 S.Ct. 111.

As Senator Jones stated in considering the act, one of the purposes of the 1920 amendment was to bring the foreign seamen up to a level with our seamen by giving them the same remedy in our own ports that our seamen have.

The decision of the Court of Appeals, if allowed to stand, would be an invitation to American shipowners to set up dummy corporations, transfer its stock to a legally

permanent alien resident within the United States and by such action immunize itself against the duties and obligations of the Jones Act, thus nullifying Congressional enactments. It would be an open invitation to use subterfuge and stock manipulations for the purpose of avoiding stringent shipping laws by seeking foreign registration eagerly offered by some foreign country. This Court recognized this danger in *Lauritzen, supra,* 345 U.S. 587 as follows:

> ". . . Confronted with such operations, our Courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which the law placed upon them . . ."

This Court refused to permit a somewhat similar subterfuge as bringing about a harsh and incongruous result in *Reed v. Yaka,* 373 U.S. 410, 83 S.Ct. 1349 (1963) and imposed liability on a shipowner who sought to immunize himself from liability for compensatory damages by bare boat chartering its vessel to the stevedoring company charged with discharging the cargo. It thus sought to limit its obligations under the exclusive provisions of the Longshoremen and Harbor Workers Act, Section 901, et seq., Title 33, U.S.C.A. even though its negligence or unseaworthiness may produce tragic injuries.

The decisions of the Court of Appeals and that of the District Court permits resident alien shipowners doing business in the United States to obtain immunity from suits to which their American competitors are subject to. But, as Plaintiffs, when it suits their convenience they are permitted, with a straight face to claim just the opposite. (see Appendix D).

Judicial sanction for such double talk would frustrate the stated Congressional policy of equalizing operating costs between American and competing foreign vessels. (Hearings 85th Congress, First Session, March 27, 1957). To achieve the ends enunciated by Representative Bonner, Congress has sought to eliminate or at least reduce, the competitive advantage of foreign flag operators by equalizing operating costs of American and foreign flag ships This was accomplished by the enactment of the LaFollette Seamen's Act of 1915 (28 Statute U.S.C.A. 85) and its amendatory provisions contained in the Jones Act of 1920, (41 Statute 1007, 46 U.S.C.A. 688 et seq). The hearings which preceded the passage of both Acts contain frank discussions of Congressional motives namely, elimination of foreign competition by equalization. (See Harold on "Some Problems Arising Out of Foreign Flag Operations", 28 Fordham Law Rev. 295-305 et seq).

The extensive operations of Hellenic Lines and its alter-ego, Pericles Callimanopoulos, are spelled out in the stipulations in the record of this case. The entire maritime operation of respondent is New York based. In terms of physical location of the executive offices, books and records, bank accounts, credit arrangements with financial institutions, etc. as well as the residence of the owner of the ninety-six percent (96%) of its stock in a home owned by the Corporation in the State of Connecticut. See Exhibit A.

The extensive operation of this Respondent can be found in the record of *Hellenic Lines, Limited v. Gulf Oil Corporation,* 340 F.2d 398. See Note 1 on Page 400 (2nd Cir. Docket # 28885). In that case the same Mr. Callimanopoulos testified as follows:

> "I tell you it's as if you asked if the city informed citizens that there is a ferry running on a specific hour from here to Staten Island. It's the same thing. We're here, established from before the war, and after the war, with nothing but regular services. And there is no person in the trade who does not know what we are doing."

There can be no serious question of substantial contacts of Hellenic Lines with the United States, if, as stated in *Gilmore & Black*, page 388, Section 6-64:

> "Finally American shipowners will not be allowed to evade their obligations under American law by taking out a nominal foreign registry, directly or through the devise of a wholly owned or controlled foreign subsidiary, and without regard to terms of the shipping articles stipulating that the rights of crew members are to be governed by the law of the country of the registry."

it ought not to be permitted here.

It is abundantly clear under the facts of this case, that the Hellenic Lines, Ltd. and Callimanopoulos have more than minimal contacts with the United States. Its shipping and operations are controlled by persons and firms largely based in the United States. This Court in *Lauritzen*, supra, has held the Jones Act not applicable in an action by a foreign seaman on a foreign vessel injured on the high seas when the owner of the vessel had minimal contacts with the United States and in *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 79 S.Ct. 468, the Court, under somewhat similar circumstances, withheld Jones Act coverage even when the injury occurred in a port within the United States. But prior to the lower courts' holding in this case, there is no decision denying

Jones Act coverage to foreign seamen injured in a United States port where the employer has substantial contacts with the United States, and the principal owner of the stock of the operating corporation was and still is a legal permanent resident of the United States. Thus under *Lauritzen* and *Romero,* Tsakonites is entitled to have his case tried under the provisions of the Jones Act.

Unless this Court lays down a rule that notwithstanding Respondent's extensive operations within the United States, its regular schedule of ships bringing in and taking out cargo from the United States, the control and management of this business by a legally permanent resident alien within the United States, is nonetheless immunized of the duties and obligations imposed on American shipowners simply because through inadvertence or by his own volition, he fails to apply for or become a citizen of the United States, then it must follow that a permanent resident of the United States conducting his business within the United States must subject himself to the same duties and obligations as an American shipowner.

CONCLUSION

The departure by the Courts below from the standards set up and approved by this Court; the dilution, if not destruction, of Congressional intent to equalize in part at least, the disparity between foreign shipowners and those operated by American interests and the danger of erosion of these established principles which the decision presented here for review may engender, presents compelling reasons for this Court to grant a writ of certiorari and upon final hearing, make clear that a legally permanent resident alien within the United States conducting a vast business op-

eration may not immunize himself from the duties and obligations of the Jones Act by simply, either inadvertently or by design, fail to apply and obtain American citizenship.

Respectfully submitted,

AMERICAN TRIAL LAWYERS ASSOCIATION
ADMIRALTY SECTION

By Arthur J. Mandell

ARTHUR J. MANDELL
Section Chairman
Attorney for Amicus Curiae

DATED at Houston, Texas, this the 27th day of March, 1967.

APPENDIX

EXCERPTS FROM STIPULATION FILED IN THIS CAUSE

Exhibit "A" Germane to Page 2

Counsel agree to read from the deposition of the Witness (CALLIMANOPOULOS) in this respect.

"Q: You are a legal resident of the United States, are you not, Mr. Callimanopoulos?
A: Yes.
Q: How long have you been admitted for a permanent, legal residence in the United States?
A: 1957.
Q: How long had you resided here, prior to 1957?
A: A visitor and treaty trader, who come, stay and go back home and went to England. I first arrived in the United States in 1945, in October of 1945.
Q: And you had an—
A: As a visitor for several years, and then as treaty trader.
During all that time, I used to go back and forth. And I have been admitted as a resident in 1957, or the end of 1956: 1956 or 1957."

Exhibit "B" Germane to Page 2

That at all the times herein PERICLES G. CALLIMANOPOULOS was the absolute and sole owner of more than 19,300 of the 20,000 issued shares of the said HELLENIC LINES, LTD. and the balance was owned by citizens and residents of Greece.

Exhibit "C" Germane to Page 2

That on or about the 12th day of August, 1959, PERICLES G. CALLIMANOPOULOS in his capacity of general manager of HELLENIC LINES, LTD. had a meeting with D. F. Houlihan, a managing partner of Price Waterhouse & Co. As a result a study was undertaken of HELLENIC LINES, LTD. at its New York office, 39 Broadway. Thereafter Price Waterhouse & Co. undertook a study of HELLENIC LINES, LTD. 39 Broadway, New York.

A study undertaken by Price Waterhouse & Co. will show that the home office of HELLENIC LINES, LTD. was in Piraeus; that the New York office was the executive office and maintained the bulk of its records in New York City.

That HELLENIC LINES, LTD. maintains a branch office at New Orleans and has subsidiary companies, Fenton Steamship (sometimes described as Fenton Piraeus), in London and Turk-Hellene in Istanbul; that the branch office at New Orleans and the two said companies operate no ship but are treated as agents on the accounts maintained at New York. With the exception of the United Kingdom Continent/Levant/Red Sea services, agents are appointed at other ports of call who will account to New York or a subagent thereof.

Exhibit "D" Attached

CERTIFICATE OF SERVICE

This is to certify that on the 27th day of March, 1967, copies of the above Application to Appear as Amicus Curiae and Brief in support thereof have been forwarded to:

Messrs. Herbert Lebovici, Harold D. Safir and Isaac Salem, Attorneys for Petitioner, Elias Tsakonites, 15 Maiden Lane, New York, N.Y. 10038, whose consent to file this application has been obtained, at their office and post office address, 15 Maiden Lane, New York, N.Y. 10038.

Mr. Edwin K. Reid of the law firm of Zock, Petrie, Sheneman & Reid, Attorneys for Respondents, Transpacific Carriers Corp. and Hellenic Lines, Ltd., 19 Richter Street, New York, New York 10004, whose consent has not been obtained, at his office and post office address, 19 Richter Street, New York, N.Y. 10004.

Arthur J. Mandell

ARTHUR J. MANDELL